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SENATE BILL 301

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

INTRODUCED BY

Ben D. Altamirano

AN ACT

RELATING TO WATER; PROVIDING FOR THE REGULATION OF LIVESTOCK  
WATER TANKS; AMENDING SECTIONS OF CHAPTER 72 NMSA 1978;  
DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 72-5-32 NMSA 1978 (being Laws 1941,  
Chapter 126, Section 25, as amended) is amended to read:

"72-5-32. CONSTRUCTION OF DAMS EXCEEDING TEN FEET IN  
HEIGHT.--Any person, association or corporation, public or  
private, the state or the United States hereafter intending to  
construct a dam shall meet the requirements of filing  
applications for appropriations and use of water pursuant to  
Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978. Any  
person, association or corporation, public or private, the  
state or the United States intending to construct a dam that

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1 exceeds ten feet in height from the lowest natural ground  
2 surface elevation to the crest of the dam or impounds more than  
3 ten acre-feet of water shall submit on a form prescribed by the  
4 state engineer detailed plans to the state engineer for  
5 approval before construction. If the state engineer finds that  
6 the dam design is safe, he shall approve the plans; provided  
7 that this section shall not apply to ~~[stock dams or]~~ erosion  
8 control structures whose maximum storage capacity does not  
9 exceed ten acre-feet ~~[or any dam]~~ and are constructed for the  
10 sole purpose of sediment ~~[and flood]~~ control under ~~[the~~  
11 ~~supervision of the United States army corps of engineers]~~ an  
12 approved United States department of agriculture's natural  
13 resources conservation service's conservation plan pursuant to  
14 the Farm Security and Rural Investment Act of 2002."

15 Section 2. Section 72-9-3 NMSA 1978 (being Laws 1907,  
16 Chapter 49, Section 74, as amended) is amended to read:

17 "72-9-3. STOCK WATER.--

18 A. Any person or governmental entity desiring to  
19 impound any of the surface waters of the state for watering of  
20 livestock shall apply to the state engineer on a form  
21 prescribed by the state engineer. If the capacity of the  
22 proposed impoundment is ten acre-feet or less, the applicant  
23 shall meet the requirements of this section. If the capacity  
24 of the proposed impoundment exceeds ten acre-feet, the  
25 applicant shall meet the requirements of filing applications

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1 for the appropriation and use of water pursuant to  
2 Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978.

3 B. Upon the filing of an application pursuant to  
4 this section, if the state engineer finds that the capacity of  
5 the proposed impoundment is ten acre-feet or less, will not be  
6 on a perennial stream and will be used for watering of  
7 livestock as defined in Subsection D of this section, the state  
8 engineer shall issue a permit to the applicant to impound and  
9 use the waters applied for; provided that if the proposed  
10 impoundment will be located on private, state or federal land  
11 not owned by the applicant, the application shall be  
12 accompanied by an acknowledged statement executed by the owner  
13 of the land or governmental entity that the applicant is  
14 granted access across the owner's land to the construction site  
15 and has permission to occupy that portion of the owner's land  
16 as is necessary for construction and use of the impoundment.

17 C. This [article] section shall [not be construed  
18 to] only apply to [stockmen or stock owners who may build or  
19 construct water tanks or ponds for the purpose of watering  
20 stock which have a capacity of ten-acre feet of water or less]  
21 impoundments constructed for the watering of livestock after  
22 the effective date of this 2004 act.

23 D. As used in this section, "livestock" means  
24 "livestock" as defined in Section 77-2-1.1 NMSA 1978 and this  
25 section applies only to the impoundment of surface water for

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1 the purpose of watering livestock. Watering of livestock does  
2 not include an impoundment of surface or ground water in any  
3 amount for fishing, fish propagation, recreation or aesthetic  
4 purposes, which shall require a permit pursuant to Section  
5 72-5-1 NMSA 1978. In determining whether an impoundment will  
6 be used for the watering of livestock, the state engineer may  
7 consider the maximum amount of water required per livestock  
8 unit."

9 Section 3. EMERGENCY.--It is necessary for the public  
10 peace, health and safety that this act take effect immediately.